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when there is reason to be concerned about the continued viability of the business being sold. As noted in the Petition, J&J no longer has any incentive to take any action under the transitional services or supply agreements that might reduce Datascope's viability, because it no longer will be acquiring a business (as part of Guidant) that will compete with the EVH Business¹⁰. Therefore, there is no need to retain the services of the Interim Monitor.

Accordingly,

It is ordered that this matter be, and it hereby is, reopened and set aside.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

TIME WARNER INC.; TURNER BROADCASTING SYSTEM,
INC.; TELE-COMMUNICATIONS, INC.; AND LIBERTY
MEDIA CORPORATION

Docket No. C-3709 Order, June 14, 2006

Order terminating applicability of a consent order with respect to Liberty Media Corporation ("Liberty"), where Liberty has demonstrated that it is exiting the relevant market and has no intention to return.

ORDER REOPENING AND MODIFYING ORDER

On February 16, 2006, Liberty Media Corporation ("Liberty"), one of the respondents named in the consent order issued by the Commission on February 3, 1997, in Docket No. C-3709 ("Order"), filed a Motion requesting the Commission to reopen and terminate

¹⁰ J&J will still be subject to a breach of contract claim by Datascope if it does not comply with the agreements.

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the Order insofar as it applies to Liberty. Liberty's Motion was filed pursuant Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b) and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.51. On February 27, 2006, the Commission placed on the public record Liberty's Motion and invited the public, for a period of 30 days, to submit comments on the Motion. No comments have been received. The Commission has reviewed the Motion and has determined to grant Liberty's Motion.

The Order that Liberty seeks to modify resulted from Time Warner Inc.'s ("Time Warner") 1996 acquisition of Turner Broadcasting, Inc. ("Turner"). Respondent Tele-Communications, Inc. ("TCI"), and its then wholly-owned subsidiary, Liberty, had a minority interest in Turner. As a result of the acquisition TCI and Liberty acquired approximately a 7.5 percent ownership interest in Time Warner. The transaction raised competitive concerns relating to the integration of Time Warner's programming services and cable systems with other cable systems.¹

¹ According to the Complaint, the effects of the acquisition would have been to reduce competition in the cable television programming and cable television system markets. Time Warner's control of so much of the cable programming in general, and of marquee or crown jewel programming in particular, would have enabled Time Warner to raise prices on its programming or condition access to some of its marquee programming on the purchase of unwanted programming, and would have limited the ability of cable television systems that buy such programming to take responsive action to avoid such price increases. The vertical integration of Time Warner's and TCI's cable systems with Time Warner's, Turner's and TCI's programming would also have allowed Time Warner to limit competition with its programming by denying rival programmers access to TCI's and Time Warner's cable systems, thereby preventing them from gaining access to sufficient distribution to realize economies of scale. At the same time, TCI's ownership interest in Time Warner and concurrent long-term contractual obligations to carry Turner programming would have undermined TCI's incentive to sign up better or less expensive non-Time Warner programming. Complaint ¶ 38. *See also* Analysis to Aid Public Comment, 61 Fed. Reg. 50301, 50309-10 (September 25, 1996) ("Analysis to Aid Public Comment").

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The Order, among other things, requires that the Liberty shares of Time Warner be nonvoting unless and until the shares are sold to an independent third party². In addition there are further restrictions on Liberty's ability to increase its overall position in Time Warner³. The Order will terminate on February 3, 2007.⁴

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.⁵

² *Id.* at II.D.(2).

³ *Id.* at II.D.(1). The remaining substantive Order provisions (Paragraphs IV. through IX.) apply only to TCI and Time Warner.

⁴ Order ¶ XIII.

⁵ See *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished); S. Rep. No. 96-500, 96th Cong., 2nd Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); see *Phillips Petroleum Co.*, 78 F.T.C. 1573 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C-3039, Letter to H.B. Hummelt (January 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); see also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification."); *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that have eliminated reasons for order or such that the order causes unanticipated hardship).

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The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order."⁶ If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders⁷.

Where a request to reopen based on a change of fact alleges that respondent has exited the market that was subject of the order, the respondent must show *both* that it has in fact exited and that it has a present intention not to reenter that market⁸. In all cases, the

⁶ See S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); see also Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify).

⁷ See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

⁸ See *KKR Associates, L.P.*, 116 F.T.C. 335 at 341 (1993) (request to modify denied where the "exit from the two relevant markets may be temporary." Also "KKR, in contrast, has not definitively stated an intention to remain out of these markets") (The Order was subsequently set aside in 1995 pursuant to the *Statement of the Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions*, 120 F.T.C. 879 (1995)); and Letter to Abbott B. Lipsky, Jr. (January 26, 1996) concerning *The Coca-Cola Company*, 121 F.T.C. 958, 960 (1996) (request to reopen denied because "Coca-Cola has to this day never disavowed an interest in acquiring Dr Pepper in the future."). Contrast *Union Carbide*, 108 F.T.C. 184, 188 (1986)

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petitioner must provide all relevant information and material for the Commission to review at the time of the filing⁹. As required by Section 2.51(b) of the Commission's Rules, Liberty has submitted an affidavit affirming that it has exited the relevant market *and* that it has no current intention to reenter that market.¹⁰

Liberty's Motion seeks to terminate the Order insofar as it applies to Liberty based on "materially changed facts [which] mean that the Order's provisions relating to Liberty are no longer in the public interest or required to preserve competition."¹¹ Liberty notes that since the Order was issued, there have been significant changes in the corporate structure of Liberty and TCI, particularly as it relates to any ownership interest in United States cable systems.

(granting a modification where "Carbide states its intention not to reenter that line of business."); and *Allied Corporation*, 109 F.T.C. 83, 84 (1987) (granting a modification where "Allied states that it does not intend now to reenter that market.").

⁹ 16 C.F.R. § 2.51(b)(2). Liberty has not asserted that any changed condition of law requires reopening the Order, and the Commission, therefore, does not need to consider that issue. Additionally, where changed circumstances do not require reopening, Section 5(b) further provides that the Commission may reopen and set aside an order when it determines that the public interest so requires. Liberty's Motion also addresses the public interest standard, which requires that the requester make a *prima facie* showing of a legitimate public interest reason or reasons justifying relief. In this instance, however, we do not need to assess the sufficiency of Liberty's public interest showing, because Liberty has made the requisite satisfactory showing that changed conditions of fact require the Order to be set aside as to Liberty.

¹⁰ In 2002, the Commission denied a motion by Liberty to reopen and modify the Order that was similar to Liberty's February 16, 2006, Motion. Among other things, the Commission based its denial on the fact that Liberty's Motion failed to address the issue of whether its exit from the relevant market was temporary or permanent. *Time Warner Inc., et al.*, Docket C-3709, Letter to Kathryn M. Fenton (July 17, 2002) at 3, accessible at <http://www.ftc.gov/opa/2002/07/fyi0240.htm>.

¹¹ Motion at 2.

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Specifically, in 1999, TCI merged with AT&T Corporation (“AT&T”). In 2001, Liberty was split off from AT&T to the holders of AT&T’s Liberty Media Group Tracking Stock, making Liberty a separate publicly traded company with no further relationship with the former TCI cable systems that were the focus of the Turner merger review. Liberty also asserts that it “has no current intention to acquire or to invest in any other cable television systems in the United States [including] both specific acquisitions of or investments in particular cable television systems as well as any more generalized intent to acquire or invest in any such cable television systems as a current goal or direction of Liberty’s overall business plan.”¹²

Upon consideration of Liberty’s Motion and other information, the Commission finds, pursuant to Section 2.51 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.51, that changed conditions of fact warrant reopening and setting aside the Order as to Liberty. Liberty has shown that it has exited the relevant market and that it does not have the current intention of reentering that market. The Order provisions relating to Liberty were designed to ensure that Time Warner’s acquisition of Turner will not leave TCI/Liberty, or their management in a position to influence Time Warner to alter its own conduct in order to benefit TCI’s/Liberty’s, interests¹³. Consequently, Liberty severing its ties with TCI and becoming an independent company with no ties to United States cable systems together with its intention not to reenter that market, warrants relieving Liberty from the Order’s proscriptions.

Accordingly,

It is ordered that this matter be, and it hereby is, reopened; and that the Commission’s Order issued on February 3, 1997, as modified on December 21, 2004, be, and it hereby is, set aside as to respondent Liberty Media Corporation as of the effective date of this Order.

By the Commission, Commissioner Kovacic recused.

¹² Motion, Affidavit of Charles Y. Tanabe, Senior Vice President, General Counsel and Secretary of Liberty Media Corporation (February 16, 2006) (“Tanabe Affidavit”) ¶ 5.

¹³ Analysis to Aid Public Comment.

RESPONSES TO PETITIONS TO QUASH OR LIMIT COMPULSORY PROCESS

GASOLINE PRICING INVESTIGATION

FTC File No. 051 0243 Decision, January 10, 2006

RESPONSE TO EXXON MOBIL CORPORATION'S PETITION TO LIMIT CIVIL INVESTIGATIVE DEMAND

Dear Mr. Muris:

This letter advises you of the disposition of Exxon Mobil Corporation's ("Exxon Mobil" or "the Company") Petition to Limit Specification 26 of the Civil Investigative Demand ("CID") issued to it on November 23, 2005. For the reasons stated herein, the Commission denies the Petition to Limit. Pursuant to 16 C.F.R. § 2.7(e), Exxon Mobil is ordered to comply with Specification 26 of the CID on or before January 20, 2006 at 5:00 p.m. E.S.T.

This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission's delegate. *See* 16 C.F.R. § 2.7(d)(4). Petitioner has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.¹

¹ This letter decision is being delivered by email and express mail. The email copy is being provided as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you received the original by express mail. In accordance with the provisions of 16 C.F.R. § 2.7(f), the timely filing of a request for review of this matter by the full Commission shall not stay the return date established by this decision.

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I. Background and Summary

Section 1809 of the Energy Policy Act of 2005 (“Energy Act”) directs the Commission to “conduct an investigation to determine if the price of gasoline is being artificially manipulated by reducing refiner capacity or by any other form of market manipulation or price gouging practices.”² Accordingly, the Commission is conducting an investigation to “determine whether certain oil refiners, marketers, or others have adopted or engaged in practices that have lessened competition in the refining, distribution, and supply of gasoline in the United States, and whether these practices are in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended.”³ On November 8, 2005, the Commission issued CIDs to a number of companies, including Exxon Mobil, containing 25 separate specifications. Petition to Limit at 2. Exxon Mobil did not object to the first CID.

On November 22, 2005, the President signed the fiscal 2006 appropriations bill for the Departments of State, Justice, Commerce, and related federal agencies, including the Commission. Section 632 of the act (“Pryor Amendment”) requires the Commission to investigate post-Hurricane Katrina gasoline prices and to report on industry profits, tax incentives, and the overall effects of increased gasoline prices on the economy⁴. Subsequent to this legislation, the

² Energy Policy Act of 2005, Pub. L. No. 109-058 § 1809, 119 Stat. 594 (2005).

³ Resolution Authorizing Use of Compulsory Process in Nonpublic Investigation, File No. 051-0243 (Sept. 30, 2005).

⁴ Petition to Limit at 7; and Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006,

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Commission issued a second set of CIDs to a number of companies, including Exxon Mobil, containing an additional three specifications (Specifications 26-28)⁵. The Petition to Limit only challenges Specification 26 of the second CID. Specification 26 requires Exxon Mobil to provide the Commission with its “claimed Tax Expenditures for tax years 2003 and 2004[.]” *Id.*

Exxon Mobil timely filed its Petition to Limit on December 19, 2005. Exxon Mobil claims that Specification 26 should be limited for three reasons: (1) the tax information sought by Specification 26 is not relevant to the Commission investigation, and therefore the

Pub.L. No.109-108 § 632, 119 Stat. 2290 (2005). The so-called “Pryor Amendment” to this act directs that not less than \$1 million of funds appropriated to the Commission must be used “to conduct an immediate investigation into nationwide gasoline prices in the aftermath of Hurricane Katrina: Provided, That the investigation shall include: (1) any evidence of price-gouging by companies with total United States wholesale sales of gasoline and petroleum distillates for calendar 2004 in excess of \$500,000,000 and by any retail distributor of gasoline and petroleum distillates against which multiple formal complaints . . . of price-gouging were filed in August or September, 2005, with a Federal or State consumer protection agency; (2) a comparison of, and an explanation of the reasons for changes in, profit levels of such companies during the 12-month period ending on August 31, 2005, and their profit levels for the month of September, 2005 . . . ; [and] (3) a summary of tax expenditures (as defined in section 3(3) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(3)) for such companies....”

⁵ *Id.* The second CID was served on Exxon Mobil on November 28, 2005.

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Commission lacks authority under the FTC Act to seek this information;⁶ (2) “Exxon Mobil cannot respond accurately to the Specification” because the Company does not compile this information in the ordinary course of business;⁷ and (3) the Commission should seek tax expenditure information from the IRS and other federal agencies, rather than demand it from Exxon Mobil, in order to afford the Company greater confidentiality protection.⁸

II. The Information Requested Is Relevant to the Commission’s Investigation

Exxon Mobil claims in essence that there is no nexus between the information requested in Specification 26 and the law enforcement purpose of the investigation as stated in the Resolution authorizing the use of compulsory process⁹. We disagree. The information sought by Specification 26 is sufficiently related to the investigation. In any event, this argument has been rendered moot by the

⁶ *Id.* at 3 and 9.

⁷ *Id.* at 3.

⁸ *Id.* at 1819 (“Therefore, the FTC would be required to provide the taxpayer information to Congress upon request, and that information could identify Exxon Mobil. Congress would have no statutory limitation on the use of that information, and courts are unlikely to provide any tangible limitation on any such use in deference to the separation of powers.... As a practical matter, therefore, there would be nothing to prevent Congress from disclosing Exxon Mobil’s tax information, inadvertently or otherwise.”).

⁹ Note 3, *supra*.

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Commission's issuance of an Order Requiring the Filing of a Special Report pursuant to Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

The Commission is entitled to require respondents to provide any information that is "not plainly incompetent or irrelevant to any lawful purpose of the [agency]...and not unduly burdensome to produce[.]" *Federal Trade Commission v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotations and citations omitted). Moreover, "the agency's own appraisal of relevancy must be accepted so long as it is not obviously wrong." *Id.* (internal quotations and citations omitted). Furthermore, "the Commission has no obligation to establish precisely the relevance of the material it seeks in an investigative subpoena by tying that material to a particular theory of violation." *Id.* at 1090 (citing *Federal Trade Commission v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977)). Determination of relevancy in an investigation is "more relaxed than in an adjudicat[ion]." *Id.* The material requested "need only be relevant to the *investigation* – the boundary of which may be defined quite generally,...as it was in the Commission's resolution here." *Id.*

The Resolution authorizing the CID implements an investigation to determine whether a violation of Section 5 of the FTC Act may have occurred. Note 3, *supra*. Accordingly, the information sought by Specification 26 is relevant to that purpose if it is of some assistance to the Commission in deciding whether there is reason to believe that Section 5 has been violated and whether an enforcement action should be commenced. *Invention Submission Corp.*, 965 F.2d at 1090. Exxon Mobil's assertion that there can be no relevance is mistaken. The material required by Specification 26 will permit the Commission to make a more accurate assessment of whether Exxon Mobil's profits were the product of tax expenditures or whether those profits were the result of other market-based forces. Thus, the information requested by Specification 26 clearly falls within the

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“more relaxed” standard of relevance applicable to investigative subpoenas. *Id.* Indeed, Exxon Mobil has tacitly recognized that profitability information is relevant to this investigation because it has responded without objection to Specification 21 of the November 8 CID.¹⁰

Exxon Mobil correctly observes that the Commission’s antitrust investigations do not routinely request information regarding tax expenditures. Petition to Limit at 9. However, this investigation is somewhat different from most Commission antitrust investigations. In the ordinary investigation, the Commission would identify a suspicious practice and inquire whether it contributed to higher consumer prices. In this investigation, by contrast, the inquiry begins, as directed by Congress, with the existence of higher prices and the Commission is investigating whether specific company practices have led to artificially maintained higher prices, or whether those prices are part of a properly functioning long-term competitive landscape.

Because this investigation begins, as directed by Congress, with the premise that prices and profits are high, the Commission must guard against mistakenly or reflexively ascribing high profits to the illegal exercise of market power. The information requested by Specification 26 will allow the Commission to gauge the portion of profitability attributable to Exxon Mobil’s business efforts and the portion attributable to tax expenditures. Ultimately this information will allow the Commission to make a more accurate assessment of whether or not Exxon Mobil’s profits are the product of market-based forces. We therefore find that the information requested by Specification 26 is sufficiently relevant to the law enforcement purposes of the Commission’s investigation.

¹⁰ Specification 21 requested monthly revenue and cost data for Exxon Mobil’s wholesale motor fuels sales.

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In any event, even if there were merit to Exxon Mobil's relevance argument, that argument is moot. As Exxon Mobil recognizes, Section 6(b) of the FTC Act, 15 U.S.C. § 46(b), provides a means whereby the Commission may obtain information even if that information is not related to a law enforcement investigation. *See* Petition to Limit at 10. Pursuant to Section 6(b), the Commission has now served Exxon Mobil with an Order Requiring the Filing of a Special Report. That Order seeks the same information sought by Specification 26 of the CID. Exxon Mobil's compliance with that Order, to which its relevance argument does not apply, will obviate its compliance with Specification 26.¹¹

III. Exxon Mobil Has Not Established That Compliance with Specification 26 Is Unduly Burdensome

Exxon Mobil does not claim that it would be unable to prepare a response to Specification 26 or that the preparation is "burdensome," as that term is ordinarily understood. *See, e.g., Federal Trade Commission v. Rockefeller*, 591 F.2d 182, 190 (2nd Cir. 1979) (target of compulsory process must show that compliance threatens to unduly disrupt or seriously hinder operation of its business). Rather, Exxon Mobil claims that it does not prepare the information requested in its ordinary course of business and would have to make assumptions and calculations in responding and that such assumptions and calculations might differ from those made by other respondents to similar CIDs. Petition to Limit at 4.

¹¹ Although compliance with the Order Requiring the Filing of a Special Report obviates compliance with Specification 26, thus mooted Exxon Mobil's Petition to Limit, this letter nonetheless responds to all the arguments raised in the Petition lest Exxon Mobil seek to quash the Order.

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The Commission regularly anticipates that CID recipients may need to provide estimates, or make assumptions and calculations in responding to a CID. Instruction K of the CID and the Certification language clearly state that CID responses be accompanied by adequate explanations of the methods used in preparing the responses.¹²

Nor does Exxon Mobil establish undue burden with its contention that other federal agencies could provide the Commission with the information it seeks. The Commission is not obligated to exhaust all other potential sources for information before issuing a CID to a respondent.

The Pryor Amendment requires both a company-specific comparison of profitability and an aggregate summary of tax expenditures, for a group of firms with gasoline and distillate sales above a dollar threshold, or that have been the subject of recent price-gouging complaints. Exxon Mobil has not shown that other federal agencies could, in fact, provide equally probative

¹² Instruction K of the CID expressly directs Exxon Mobil that:

Whenever a Specification requests the submission of data: (i) provide documents sufficient to show the data used and all sources for such data; (ii) explain each step in the Company's calculations in sufficient detail to permit replication of the Company's calculations from the source documents submitted; and (iii) explain why the methodology used represents the most accurate estimate the Company can make.

CID at 4.

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information to the Commission¹³. More importantly, even if responsive information were available from alternative sources, Exxon Mobil cannot be permitted to determine the course of the Commission's investigation. Rather, the Commission must remain free to structure its investigations, including the selection of the sources from which it seeks information, in the manner it deems most appropriate. Accordingly, Exxon Mobil's second argument provides no grounds for relief.

IV. Exxon Mobil's Concern about Congressional Disclosure Does Not Raise a Valid Claim of Privilege

The Commission appreciates Exxon Mobil's confidentiality concerns, but Congress has the prerogative to request trade secret and other business confidences that the Commission acquires during the course of an investigation. Further, the Commission cannot restrict Congress's ultimate uses of such information. Under the

¹³ Exxon Mobil has made an unsupported assertion that other federal agencies could provide the Commission with the information required of Exxon Mobil by Specification 26. Even if that were a sufficient ground for relief, Exxon Mobil has not provided the Commission with either a factual or legal basis to believe that such agencies could or would provide the information. Indeed, the Commission believes that such agencies could not provide the Commission with information of comparable probative value to that which can be provided by Exxon Mobil. That being the case, Exxon Mobil has not satisfied its burden of demonstrating that it is entitled to relief. *Rockefeller*, 591 F.2d at 190 ("the burden of showing that an agency subpoena is unreasonable remains with the respondent . . .").

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Commission's rules, if Congress requests confidential information from the Commission, notice will be given to the person who provided such information to the Commission and the Commission will advise Congress that the person who provided the information to the Commission considers it to be confidential. 16 C.F.R. § 4.11(b). If fear of Congressional use or disclosure of information provided a legitimate ground for limiting a CID, however, the Commission would be deprived of its ability to acquire the confidential business information that often is central to its investigations, especially given that Congress often requests the initiation of agency investigations in the first instance. Therefore, Exxon Mobil's concern about Congress's possible use or disclosure of the Company's confidential business records does not create a legitimate basis for limiting the CID.

V. Conclusion and Order

Accordingly, no grounds having been established by Exxon Mobil to warrant limiting Specification 26 of the CID, *it is ordered that* Exxon Mobil's Petition to Limit should be, and it hereby is, *denied*.

It is further ordered that Exxon Mobil shall respond to Specification 26 of the CID on or before January 20, 2006 at 5:00 p.m. E.S.T.

By direction of the Commission.